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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 SUCCESSFACTORS, INC.,

13 Plaintiff,

14 v.

15 SOFTSCAPE, INC.,

16 Defendant.

Case No.: C-08-1376 (CW)

**ANSWER OF SOFTSCAPE, INC.
TO THE COMPLAINT FILED BY
SUCCESSFACTORS, INC.**

17
18 Defendant Softscape, Inc. ("Defendant" or "Softscape"), based upon its knowledge and
19 information and belief, hereby answers the Complaint filed by plaintiff SuccessFactors, Inc.
20 ("Plaintiff" or "SuccessFactors") filed March 11, 2008 (the "Complaint"). In responding to the
21 Complaint, Softscape admits neither that it bears the burden of proving any of the defenses set
22 forth below nor the relevance of any of plaintiff's allegations.

23 1. Answering Paragraph 1, Softscape notes that Paragraph 1 sets forth plaintiff's
24 characterizations of this action, as well as legal conclusions that do not purport to require a
25 response from Softscape. To the extent Paragraph 1 purports to contain any factual assertions
26 requiring a response, Softscape admits that it is a competitor of plaintiff. Except as specifically
27 admitted herein, Softscape denies the allegations in Paragraph 1.
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2. Answering Paragraph 2, Softscape notes that Paragraph 2 sets forth plaintiff's characterizations of this action, as well as legal conclusions to which no response is required. To the extent Paragraph 2 purports to contain any factual assertions requiring a response, Softscape admits that SuccessFactors' Complaint purports to allege claims for (i) false and misleading statements under the laws of the United States, Title 15, United States Code (Lanham Act); (ii) false and misleading statements under the laws of the State of California, Section 17500, Business and Professions Code; (iii) trademark infringement under the laws of the United States, Title 15, United States Code; (iv) fraud and related activity in connection with a computer under the laws of the United States, Title 18, United States Code; (v) unauthorized access to computers, computer systems and computer data under the laws of the State of California, Section 502, Penal Code; (vi) defamation under the laws of the State of California, Section 44, *et seq.*, Civil Code; (vii) trade libel under the laws of the State of California, Section 45, Civil Code; (viii) intentional interference with prospective economic relations under the laws of the State of California; and (ix) unfair competition under the laws of the State of California, Section 17200, Business and Professions Code. Except as specifically admitted herein, Softscape denies the allegations in Paragraph 2.

3. Answering Paragraph 3, Softscape lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and, on that basis, denies them.

4. Answering Paragraph 4, Softscape admits the allegations in Paragraph 4.

5. Answering Paragraph 5, Softscape lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, on that basis, denies them.

6. Answering Paragraph 6, Softscape admits the allegations in Paragraph 6, except that Softscape lacks knowledge or information sufficient to form a belief as to the truth of the allegation that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1367.

7. Answering Paragraph 7, Softscape admits that it is subject to personal jurisdiction in this district. Except as specifically admitted herein, Softscape denies the allegations in Paragraph 7.

1 8. Answering Paragraph 8, Softscape admits that venue is proper in this district.
2 Except as specifically admitted herein, Softscape denies the allegations in Paragraph 8.

3 9. Answering Paragraph 9, Softscape admits that assignment to the San Francisco
4 Division is proper. Except as specifically admitted herein, Softscape denies the allegations in
5 Paragraph 9.

6 10. Answering Paragraph 10, Softscape lacks knowledge or information sufficient to
7 form a belief as to the truth of the allegations in Paragraph 10 and, on that basis, denies them.

8 11. Answering Paragraph 11, Softscape notes that Paragraph 11 contains legal
9 conclusions to which no response is required. To the extent Paragraph 11 purports to contain
10 factual assertions requiring a response, Softscape admits that it offers human resource
11 management systems and competes with SuccessFactors for many of the same customers. Except
12 as specifically admitted herein, Softscape denies the allegations in Paragraph 11.

13 12. Answering Paragraph 12, Softscape notes that Paragraph 12 contains legal
14 conclusions to which no response is required. To the extent Paragraph 12 purports to contain
15 factual assertions requiring a response, Softscape admits that the Presentation is in a PowerPoint
16 format, runs over 40 pages, and is entitled "The Naked Truth." Except as specifically admitted
17 herein, Softscape denies the allegations in Paragraph 12.

18 13. Answering Paragraph 13, Softscape notes that Paragraph 13 contains legal
19 conclusions to which no response is required. To the extent Paragraph 13 purports to contain
20 factual assertions requiring a response, Softscape admits that the Presentation was prepared for
21 internal use by Softscape. Except as specifically admitted herein, Softscape denies the allegations
22 in Paragraph 13.

23 14. Answering Paragraph 14, Softscape notes that Paragraph 14 contains legal
24 conclusions and argument to which no response is required.

25 14(a). Answering Paragraph 14(a), Softscape notes that Paragraph 14(a) contains legal
26 conclusions to which no response is required. To the extent Paragraph 14(a) purports to contain
27 factual assertions requiring a response, Softscape admits that the quoted language appears in the
28 Presentation. Except as specifically admitted herein, Softscape lacks knowledge or information

1 sufficient to form a belief as to the truth of the allegations in Paragraph 14(a) and, on that basis,
2 denies them.

3 14(b). Answering Paragraph 14(b), Softscape admits that the Presentation identifies
4 Mastercard as a customer that SuccessFactors' website no longer references. Except as
5 specifically admitted herein, Softscape lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations in Paragraph 14(b) and, on that basis, denies them.

7 14(c). Answering Paragraph 14(c), Softscape admits that the Presentation contains the
8 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
9 information sufficient to form a belief as to the truth of the allegations in Paragraph 14(c) and, on
10 that basis, denies them.

11 14(d). Answering Paragraph 14(d), Softscape admits that the Presentation contains the
12 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
13 information sufficient to form a belief as to the truth of the allegations in Paragraph 14(d) and, on
14 that basis, denies them.

15 14(e). Answering Paragraph 14(e), Softscape admits that the Presentation contains the
16 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
17 information sufficient to form a belief as to the truth of the allegations in Paragraph 14(e) and, on
18 that basis, denies them.

19 15. Answering Paragraph 15, Softscape notes that Paragraph 15 contains legal
20 conclusions to which no response is required. To the extent Paragraph 15 purports to contain
21 factual assertions requiring a response, Softscape lacks knowledge or information sufficient to
22 form a belief as to the truth of the allegations in Paragraph 15 and, on that basis, denies them.

23 16. Answering Paragraph 16, Softscape notes that Paragraph 16 contains legal
24 conclusions and argument to which no response is required.

25 16(a). Answering Paragraph 16(a), Softscape admits that the Presentation states that
26 plaintiff has 440 consultants and suggests that SuccessFactors' product requires extensive
27 consulting services. Except as specifically admitted herein, Softscape lacks knowledge or
28

1 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(a) and, on
2 that basis, denies them.

3 16(b). Answering Paragraph 16(b), Softscape admits that the Presentation contains the
4 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
5 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(b) and, on
6 that basis, denies them.

7 16(c). Answering Paragraph 16(c), Softscape admits that the Presentation contains the
8 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
9 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(c) and, on
10 that basis, denies them.

11 16(d). Answering Paragraph 16(d), Softscape admits that the Presentation contains the
12 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
13 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(d) and, on
14 that basis, denies them.

15 16(e). Answering Paragraph 16(e), Softscape admits that the Presentation states that long
16 scrolling forms with a lot of data makes for long pages and a confusing layout. Except as
17 specifically admitted herein, Softscape lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations in Paragraph 16(e) and, on that basis, denies them.

19 16(f). Answering Paragraph 16(f), Softscape admits that the Presentation contains the
20 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
21 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(f) and, on
22 that basis, denies them.

23 16(g). Answering Paragraph 16(g), Softscape admits that the Presentation contains the
24 quoted language. Except as specifically admitted herein, Softscape lacks knowledge or
25 information sufficient to form a belief as to the truth of the allegations in Paragraph 16(g) and, on
26 that basis, denies them.

27 17. Answering Paragraph 17, Softscape notes that Paragraph 17 contains legal
28 conclusions and argument to which no response is required.

1 18. Answering Paragraph 18, Softscape denies that it circulated the Presentation to
2 SuccessFactors' customers and prospects on March 4, 2008. As to the remainder of Paragraph 18,
3 Softscape lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 18 and, on that basis, denies them.

5 19. Answering Paragraph 19, Softscape admits that the email contains the quoted
6 language that appears in this paragraph. Except as specifically admitted herein, Softscape denies
7 the allegations in Paragraph 19.

8 20. Answering Paragraph 20, Softscape lacks knowledge or information sufficient to
9 form a belief as to the truth of the allegations of Paragraph 20 and, on that basis, denies them.

10 21. Answering Paragraph 21, Softscape notes that Paragraph 21 contains argument and
11 legal conclusions to which no response is required. To the extent Paragraph 21 purports to contain
12 factual assertions requiring a response, Softscape admits that it has used a Presentation entitled
13 "The Naked Truth" internally to motivate its sales force. Except as specifically admitted herein,
14 Softscape denies the allegations in Paragraph 21.

15 22. Answering Paragraph 22, Softscape admits that the Presentation contains screen
16 shots from a SuccessFactors' webinar, portions of a webpage from SuccessFactors' website, and
17 an online demonstration operated by SuccessFactors to demonstrate its products. Except as
18 specifically admitted herein, Softscape lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations in Paragraph 22 and, on that basis, denies them.

20 23. Answering Paragraph 23, Softscape notes that Paragraph 23 contains legal
21 conclusions and argument to which no response is required. To the extent Paragraph 23 purports
22 to contain factual assertions requiring a response, Softscape lacks knowledge or information
23 sufficient to form a belief as to the truth of the allegations in Paragraph 23 as to the nature of the
24 "ACE Demo environment" and, on that basis, denies those allegations. Softscape admits that
25 Softscape accessed SuccessFactors' marketing product demonstration from IP addresses in
26 Massachusetts, as well as an IP address in the United Kingdom. Except as specifically admitted
27 herein, Softscape denies the allegations in Paragraph 23.

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1 24. Answering Paragraph 24, Softscape notes that Paragraph 24 contains legal
2 conclusions and argument to which no response is required. To the extent Paragraph 24 purports
3 to contain factual assertions requiring a response, Softscape lacks knowledge or information
4 sufficient to form a belief as to the truth of the allegations in Paragraph 24 and, on that basis,
5 denies them.

6 25. Answering Paragraph 25, Softscape restates and incorporates by reference its
7 answers to Paragraphs 1-24 as though fully set forth herein.

8 26. Answering Paragraph 26, Softscape notes that Paragraph 26 contains a legal
9 conclusion to which no response is required. To the extent Paragraph 26 purports to contain
10 factual assertions requiring a response, Softscape denies the allegations in Paragraph 26.

11 27. Answering Paragraph 27, Softscape notes that Paragraph 27 contains a legal
12 conclusion to which no response is required. To the extent Paragraph 27 purports to contain
13 factual assertions requiring a response, Softscape denies the allegations in Paragraph 27.

14 28. Answering Paragraph 28, Softscape notes that Paragraph 28 contains legal
15 conclusions to which no response is required. To the extent Paragraph 28 purports to contain
16 factual assertions requiring a response, Softscape denies the allegations in Paragraph 28.

17 29. Answering Paragraph 29, Softscape notes that Paragraph 29 contains legal
18 conclusions to which no response is required. To the extent Paragraph 29 purports to contain
19 factual assertions requiring a response, Softscape denies the allegations in Paragraph 29.

20 30. Answering Paragraph 30, Softscape notes that Paragraph 30 contains legal
21 conclusions to which no response is required. To the extent Paragraph 30 purports to contain
22 factual assertions requiring a response, Softscape denies the allegations in Paragraph 30.

23 31. Answering Paragraph 31, Softscape notes that Paragraph 31 contains legal
24 conclusions to which no response is required. To the extent Paragraph 31 purports to contain
25 factual assertions requiring a response, Softscape denies the allegations in Paragraph 31.

26 32. Answering Paragraph 32, Softscape notes that Paragraph 32 contains a legal
27 conclusion to which no response is required. To the extent Paragraph 32 purports to contain
28 factual assertions requiring a response, Softscape denies the allegations in Paragraph 32.

1 33. Answering Paragraph 33, Softscape notes that Paragraph 33 contains legal
2 conclusions to which no response is required. To the extent Paragraph 33 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 33.

4 34. Answering Paragraph 34, Softscape restates and incorporates by reference its
5 answers to Paragraphs 1-33 as though fully set forth herein.

6 35. Answering Paragraph 35, Softscape notes that Paragraph 35 contains legal
7 conclusions to which no response is required. To the extent Paragraph 35 purports to contain
8 factual assertions requiring a response, Softscape denies the allegations in Paragraph 35.

9 36. Answering Paragraph 36, Softscape notes that Paragraph 36 contains legal
10 conclusions to which no response is required. To the extent Paragraph 36 purports to contain
11 factual assertions requiring a response, Softscape denies the allegations in Paragraph 36.

12 37. Answering Paragraph 37, Softscape notes that Paragraph 37 contains legal
13 conclusions to which no response is required. To the extent Paragraph 37 purports to contain
14 factual assertions requiring a response, Softscape denies the allegations in Paragraph 37.

15 38. Answering Paragraph 38, Softscape notes that Paragraph 38 contains legal
16 conclusions to which no response is required. To the extent Paragraph 38 purports to contain
17 factual assertions requiring a response, Softscape denies the allegations in Paragraph 38.

18 39. Answering Paragraph 39, Softscape notes that Paragraph 39 contains legal
19 conclusions to which no response is required. To the extent Paragraph 39 purports to contain
20 factual assertions requiring a response, Softscape denies the allegations in Paragraph 39.

21 40. Answering Paragraph 40, Softscape restates and incorporates by reference its
22 answers to Paragraphs 1-39 as though fully set forth herein.

23 41. Answering Paragraph 41, to the extent Paragraph 41 purports to contain factual
24 assertions requiring a response, Softscape admits that it knew SuccessFactors used the word mark
25 SUCCESSFACTORS and a logo as a trademark for its services and products. Except as
26 specifically admitted herein, Softscape denies the allegations in Paragraph 41.

27 42. Answering Paragraph 42, Softscape lacks knowledge or information sufficient to
28 form a belief as to the truth of the allegations in Paragraph 42 and, on that basis, denies them.

1 43. Answering Paragraph 43, Softscape notes that Paragraph 43 contains legal
2 conclusions to which no response is required. To the extent Paragraph 43 purports to contain
3 factual assertions requiring a response, Softscape admits that SuccessFactors' trademark appears
4 on pages of the Presentation. Except as specifically admitted herein, Softscape denies the
5 allegations in Paragraph 43.

6 44. Answering Paragraph 44, Softscape notes that Paragraph 44 contains legal
7 conclusions to which no response is required. To the extent Paragraph 44 purports to contain
8 factual assertions requiring a response, Softscape admits that it knew SuccessFactors used its
9 trademark. Except as specifically admitted herein, Softscape denies the allegations in Paragraph
10 44.

11 45. Answering Paragraph 45, Softscape notes that Paragraph 45 contains legal
12 conclusions to which no response is required. To the extent Paragraph 45 purports to contain
13 factual assertions requiring a response, Softscape denies the allegations in Paragraph 45.

14 46. Answering Paragraph 46, Softscape notes that Paragraph 46 contains legal
15 conclusions to which no response is required. To the extent Paragraph 46 purports to contain
16 factual assertions requiring a response, Softscape denies the allegations in Paragraph 46.

17 47. Answering Paragraph 47, Softscape notes that Paragraph 47 contains legal
18 conclusions to which no response is required. To the extent Paragraph 47 purports to contain
19 factual assertions requiring a response, Softscape denies the allegations in Paragraph 47.

20 48. Answering Paragraph 48, Softscape restates and incorporates by reference its
21 answers to Paragraphs 1-47 as though fully set forth herein.

22 49. Answering Paragraph 49, Softscape lacks knowledge or information sufficient to
23 form a belief as to the truth of the allegations in Paragraph 49 and, on that basis, denies them.

24 50. Answering Paragraph 50, Softscape lacks knowledge or information sufficient to
25 form a belief as to the truth of the allegations in Paragraph 50 and, on that basis, denies them.

26 51. Answering Paragraph 51, Softscape notes that Paragraph 51 contains legal
27 conclusions to which no response is required. To the extent Paragraph 51 purports to contain
28 factual assertions requiring a response, Softscape denies the allegations in Paragraph 51.

1 52. Answering Paragraph 52, Softscape notes that Paragraph 52 contains legal
2 conclusions to which no response is required. To the extent Paragraph 52 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 52.

4 53. Answering Paragraph 53, Softscape notes that Paragraph 53 contains legal
5 conclusions to which no response is required. To the extent Paragraph 53 purports to contain
6 factual assertions requiring a response, Softscape denies the allegations in Paragraph 53.

7 54. Answering Paragraph 54, Softscape notes that Paragraph 54 contains legal
8 conclusions to which no response is required. To the extent Paragraph 54 purports to contain
9 factual assertions requiring a response, Softscape denies the allegations in Paragraph 54.

10 55. Answering Paragraph 55, Softscape notes that Paragraph 55 contains legal
11 conclusions to which no response is required. To the extent Paragraph 55 purports to contain
12 factual assertions requiring a response, Softscape denies the allegations in Paragraph 55.

13 56. Answering Paragraph 56, Softscape notes that Paragraph 56 contains legal
14 conclusions to which no response is required. To the extent Paragraph 56 purports to contain
15 factual assertions requiring a response, Softscape denies the allegations in Paragraph 56.

16 57. Answering Paragraph 57, Softscape notes that Paragraph 57 contains legal
17 conclusions to which no response is required. To the extent Paragraph 57 purports to contain
18 factual assertions requiring a response, Softscape denies the allegations in Paragraph 57.

19 58. Answering Paragraph 58, Softscape restates and incorporates by reference its
20 answers to Paragraphs 1-57 as though fully set forth herein.

21 59. Answering Paragraph 59, Softscape lacks knowledge or information sufficient to
22 form a belief as to the truth of the allegations in Paragraph 59 and, on that basis, denies them.

23 60. Answering Paragraph 60, Softscape lacks knowledge or information sufficient to
24 form a belief as to the truth of the allegations in Paragraph 60 and, on that basis, denies them.

25 61. Answering Paragraph 61, Softscape notes that Paragraph 61 contains legal
26 conclusions to which no response is required. To the extent Paragraph 61 purports to contain
27 factual assertions requiring a response, Softscape denies the allegations in Paragraph 61.
28

1 62. Answering Paragraph 62, Softscape notes that Paragraph 62 contains legal
2 conclusions to which no response is required. To the extent Paragraph 62 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 62.

4 62(a). Answering Paragraph 62(a), Softscape notes that Paragraph 62(a) contains legal
5 conclusions to which no response is required. To the extent Paragraph 62(a) purports to contain
6 factual assertions requiring a response, Softscape denies the allegations in Paragraph 62(a).

7 62(b). Answering Paragraph 62(b), Softscape notes that Paragraph 62(b) contains legal
8 conclusions to which no response is required. To the extent Paragraph 62(b) purports to contain
9 factual assertions requiring a response, Softscape denies the allegations in Paragraph 62(b).

10 62(c). Answering Paragraph 62(c), Softscape notes that Paragraph 62(c) contains legal
11 conclusions to which no response is required. To the extent Paragraph 62(c) purports to contain
12 factual assertions requiring a response, Softscape denies the allegations in Paragraph 62(c).

13 63. Answering Paragraph 63, Softscape lacks knowledge or information sufficient to
14 form a belief as to the truth of the allegations of Paragraph 63 regarding the nature of the "ACE
15 Demo environment" and, on that basis, denies those allegations. Softscape denies the remaining
16 allegations in paragraph 63.

17 64. Answering Paragraph 64, Softscape notes that Paragraph 64 contains legal
18 conclusions to which no response is required. To the extent Paragraph 64 purports to contain
19 factual assertions requiring a response, Softscape denies the allegations in Paragraph 64.

20 65. Answering Paragraph 65, Softscape notes that Paragraph 65 contains legal
21 conclusions to which no response is required.

22 66. Answering Paragraph 66, Softscape notes that Paragraph 66 contains legal
23 conclusions to which no response is required.

24 67. Answering Paragraph 67, Softscape notes that Paragraph 67 contains legal
25 conclusions to which no response is required.

26 68. Answering Paragraph 68, Softscape restates and incorporates by reference its
27 answers to Paragraphs 1-67 as though fully set forth herein.
28

1 69. Answering Paragraph 69, Softscape notes that Paragraph 69 contains legal
2 conclusions to which no response is required. To the extent Paragraph 69 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 69.

4 70. Answering Paragraph 70, Softscape notes that Paragraph 70 contains legal
5 conclusions to which no response is required. To the extent Paragraph 70 purports to contain
6 factual assertions requiring a response, Softscape denies the allegations in Paragraph 70.

7 71. Answering Paragraph 71, Softscape notes that Paragraph 71 contains legal
8 conclusions to which no response is required. To the extent Paragraph 71 purports to contain
9 factual assertions requiring a response, Softscape lacks knowledge or information sufficient to
10 form a belief as to the truth of the allegations of Paragraph 71 and, on that basis, denies them.

11 72. Answering Paragraph 72, Softscape notes that Paragraph 72 contains legal
12 conclusions to which no response is required. To the extent Paragraph 72 purports to contain
13 factual assertions requiring a response, Softscape denies the allegations in Paragraph 72.

14 73. Answering Paragraph 73, Softscape notes that Paragraph 73 contains legal
15 conclusions to which no response is required. To the extent Paragraph 73 purports to contain
16 factual assertions requiring a response, Softscape denies the allegations in Paragraph 73.

17 74. Answering Paragraph 74, Softscape notes that Paragraph 74 contains legal
18 conclusions to which no response is required. To the extent Paragraph 74 purports to contain
19 factual assertions requiring a response, Softscape denies the allegations in Paragraph 74.

20 75. Answering Paragraph 75, Softscape notes that Paragraph 75 contains legal
21 conclusions to which no response is required. To the extent Paragraph 75 purports to contain
22 factual assertions requiring a response, Softscape denies the allegations in Paragraph 75.

23 76. Answering Paragraph 76, Softscape restates and incorporates by references its
24 answers to paragraphs 1-75 as though fully set forth herein.

25 77. Answering Paragraph 77, Softscape notes that Paragraph 77 contains legal
26 conclusions to which no response is required. To the extent Paragraph 77 purports to contain
27 factual assertions requiring a response, Softscape denies the allegations in Paragraph 77.
28

1 78. Answering Paragraph 78, Softscape admits that the Presentation contains
2 statements about plaintiff's performance management software. Softscape lacks sufficient
3 knowledge or information regarding how those statements were understood by those who
4 allegedly read or heard the statements. Except as specifically admitted herein, Softscape denies
5 the allegations of Paragraph 78.

6 79. Answering Paragraph 79, Softscape notes that Paragraph 79 contains legal
7 conclusions to which no response is required. To the extent Paragraph 79 purports to contain
8 factual assertions requiring a response, Softscape denies the allegations in Paragraph 79.

9 80. Answering Paragraph 80, Softscape notes that Paragraph 80 contains legal
10 conclusions to which no response is required. To the extent Paragraph 80 purports to contain
11 factual assertions requiring a response, Softscape denies the allegations in Paragraph 80.

12 81. Answering Paragraph 81, Softscape notes that Paragraph 81 contains legal
13 conclusions to which no response is required. To the extent Paragraph 81 purports to contain
14 factual assertions requiring a response, Softscape denies the allegations in Paragraph 81.

15 82. Answering Paragraph 82, Softscape restates and incorporates by reference its
16 answers to Paragraphs 1-81 as though fully set forth herein.

17 83. Answering Paragraph 83, Softscape lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations of Paragraph 83 and, on that basis, denies them.

19 84. Answering Paragraph 84, Softscape lacks knowledge or information sufficient to
20 form a belief as to the truth of the allegations of Paragraph 84 and, on that basis, denies them.

21 85. Answering Paragraph 85, Softscape notes that Paragraph 85 contains legal
22 conclusions to which no response is required. To the extent Paragraph 85 purports to contain
23 factual assertions requiring a response, Softscape denies the allegations in Paragraph 85.

24 86. Answering Paragraph 86, Softscape notes that Paragraph 86 contains legal
25 conclusions to which no response is required. To the extent Paragraph 86 purports to contain
26 factual assertions requiring a response, Softscape denies the allegations in Paragraph 86.

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28

1 87. Answering Paragraph 87, Softscape notes that Paragraph 87 contains legal
2 conclusions to which no response is required. To the extent Paragraph 87 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 87.

4 88. Answering Paragraph 88, Softscape notes that Paragraph 88 contains legal
5 conclusions to which no response is required. To the extent Paragraph 88 purports to contain
6 factual assertions requiring a response, Softscape denies the allegations in Paragraph 88.

7 89. Answering Paragraph 89, Softscape notes that Paragraph 89 contains legal
8 conclusions to which no response is required.

9 90. Answering Paragraph 90, Softscape notes that Paragraph 90 contains legal
10 conclusions to which no response is required. To the extent Paragraph 90 purports to contain
11 factual assertions requiring a response, Softscape denies the allegations in Paragraph 90.

12 91. Answering Paragraph 91, Softscape restates and incorporates by reference its
13 answers to Paragraphs 1-90 as though fully set forth herein.

14 92. Answering Paragraph 92, Softscape notes that Paragraph 92 contains legal
15 conclusions to which no response is required.

16 92(a). Answering Paragraph 92(a), Softscape notes that Paragraph 92(a) contains legal
17 conclusions to which no response is required.

18 92(b). Answering Paragraph 92(b), Softscape notes that Paragraph 92(b) contains legal
19 conclusions to which no response is required.

20 92(c). Answering Paragraph 92(c), Softscape notes that Paragraph 92(c) contains legal
21 conclusions to which no response is required.

22 92(d). Answering Paragraph 92(d), Softscape notes that Paragraph 92(d) contains legal
23 conclusions to which no response is required.

24 92(e). Answering Paragraph 92(e), Softscape notes that Paragraph 92(e) contains legal
25 conclusions to which no response is required.

26 92(f). Answering Paragraph 92(f), Softscape notes that Paragraph 92(f) contains legal
27 conclusions to which no response is required.
28

1 93. Answering Paragraph 93, Softscape notes that Paragraph 93 contains legal
2 conclusions to which no response is required. To the extent Paragraph 93 purports to contain
3 factual assertions requiring a response, Softscape denies the allegations in Paragraph 93.

4 94. Answering Paragraph 94, Softscape notes that Paragraph 94 contains legal
5 conclusions to which no response is required. To the extent Paragraph 94 purports to contain
6 factual assertions requiring a response, Softscape denies the allegations in Paragraph 94.

7 95. Answering Paragraph 95, Softscape notes that Paragraph 95 contains legal
8 conclusions to which no response is required. To the extent Paragraph 95 purports to contain
9 factual assertions requiring a response, Softscape denies the allegations in Paragraph 95.

10 96. Answering Paragraph 96, Softscape notes that Paragraph 96 contains legal
11 conclusions to which no response is required. To the extent Paragraph 96 purports to contain
12 factual assertions requiring a response, Softscape denies the allegations in Paragraph 96.

13 **PRAYER FOR RELIEF**

14 To the extent that any response is required to plaintiff's prayer for relief, Softscape denies
15 the allegations therein.

16 **AFFIRMATIVE DEFENSES**

17 Softscape asserts the following affirmative and other defenses. In asserting these defenses,
18 Softscape does not assume the burden of proof with respect to any issue as to which applicable
19 law places the burden of proof upon plaintiff.

20 **FIRST AFFIRMATIVE DEFENSE**

21 The Complaint, and each cause of action therein, fails to state a claim upon which relief
22 can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Plaintiff is barred from prosecuting the purported causes of action set forth in the
25 Complaint because plaintiff, and/or the persons and/or entities acting on its behalf, consented to
26 and acquiesced in the subject conduct.

27 **THIRD AFFIRMATIVE DEFENSE**

28 Plaintiff is barred, in whole or in part, from prosecuting the purported causes of action set

1 forth in the Complaint by the doctrine of estoppel.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 Plaintiff failed to mitigate any damages that it may have suffered.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 The actions taken by Softscape were not deceptive.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred, in whole or in party, by the doctrines of waiver, estoppel,
10 ratifications, and/or unclean hands.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Many of the matters now claimed by the Complaint to be the subject of misrepresentations
13 or omissions were based on publicly available information.

14 **NINTH AFFIRMATIVE DEFENSE**

15 No contractual relationship exists between plaintiff and Softscape and, therefore, plaintiff's
16 claims fails to state a claim upon which relief can be granted against Softscape, insofar as plaintiff
17 purports to assert any contractual relationship with Softscape.

18 **TENTH AFFIRMATIVE DEFENSE**

19 Plaintiff has not been injured or damaged as a proximate result of any act or omission for
20 which Softscape is responsible.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 The damages alleged to have been suffered by plaintiff in the Complaint were proximately
23 caused or contributed to by acts or failures to act of persons other than Softscape, which acts or
24 failures to act constitute an intervening and superseding cause of the damages alleged in the
25 Complaint.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 By virtue of the acts of the plaintiff, and/or the persons and/or entities acting on its behalf,
28 plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint by the

1 doctrine of authorization.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 Softscape alleges that any damages sustained by plaintiff were proximately caused by an
4 intervening cause and/or by a third party.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 Insofar as Softscape has delegated any duty to any subordinate, such delegation was at all
7 times done in good faith, and with due care. Softscape is therefore not liable for any act or
8 omission of any subordinate.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 Softscape alleges that the statements made in the Presentation were truthful.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 Softscape alleges that any non-truthful statement in the Presentation was not material.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 Softscape did not authorize, ratify, or condone the external circulation of the Presentation.
15 Softscape is therefore not liable for the circulation thereof.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 Softscape alleges that its use of SuccessFactors' purported trademarks was fair.

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 Softscape alleges that its use of SuccessFactors' purported trademarks was internal and
20 non-infringing.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 Softscape alleges that any access to SuccessFactors' computer system was within the scope
23 of authorization and/or with the plaintiff's permission.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff has not suffered sufficient damage to its computer system (and foreseeable loss
26 from such damage) as defined in 18 U.S.C. § 1030(a)(5)(B)(i).

27 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff has not suffered any damage or loss to its computer as those terms are defined in

1 California Penal Code § 502.

2 **ADDITIONAL AFFIRMATIVE DEFENSES**

3 Softscape reserves the right to assert additional affirmative defenses once the precise
4 nature of the relevant circumstances or events is determined through discovery.

5 **PRAYER**

6 WHEREFORE, Softscape prays that the Court enter judgment as follows:

- 7 1. That judgment be entered in favor of Softscape;
- 8 2. That plaintiffs take nothing from Softscape by its Complaint, and that the same be
9 dismissed with prejudice;
- 10 3. For costs, attorneys' fees, expert witness fees and court hearing costs incurred
11 herein; and
- 12 4. For such other and further relief as the Court deems just and proper.

13
14 Dated: March 31, 2008

TAYLOR & COMPANY LAW OFFICES, LLP

15
16 By: /s/ Jessica L. Grant
17 Jessica L. Grant
18 Attorneys for Defendant SOFTSCAPE, INC.